

GUIDELINE

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AMENDMENT NO.

CAL. NO.

COMMITTEE AMENDMENT

Purpose: To amend the Communications Act of 1934 to promote effective competition in the market for multichannel video service as a means of constraining cable television subscriber rate increases, to enhance the ability of providers of Direct-to-home Satellite Service to compete effectively with cable television systems, to protect the availability of free, over-the-air television, and for other purposes.

IN THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION_ 106 th
Cong., 1 st Sess.

S. 303, 106 th Congress, 1 st Session

DATELINE March 9, 1999

Intended to be proposed by Mr. McCain

Viz: Strike out all after the enacting clause and insert the following:

SECTION. 1. SHORT TITLE.

This Act may be cited as the ``Satellite Television Act of 1999".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) In the Cable Television Consumer Protection and Competition Act of 1992, Congress stated its policy of promoting competition in cable services and making

available to the public a diversity of views and information through cable television and other video media.

(2) In the Telecommunications Act of 1996, Congress stated its policy of securing lower prices and higher quality service for American telecommunications consumers and encouraging the rapid deployment of new telecommunications technologies.

(3) In most places throughout America, cable television system operators still do not face effective competition from other providers of multichannel video service.

(4) Absent effective competition, the market power exercised by cable television operators enables them to raise the price of cable service to consumers, and to control the price and availability of cable programming services to other multichannel video service providers. Current Federal Communications Commission rules have been inadequate in constraining cable price increases.

(5) Direct-to-home Satellite Service has over 8 million subscribers and constitutes the most significant competitive alternative to cable television service.

(6) Direct-to-home Satellite Service currently suffers from a number of statutory, regulatory, and technical barriers that keep it from being an effective competitor to cable television in the provision of multichannel video services.

(7) The most prominent of these barriers is the inability to provide subscribers with local television broadcast signals by satellite.

(8) Permitting providers of Direct-to-home Satellite Service to retransmit local television signals to their subscribers would greatly enhance the ability of Direct-to-home Satellite Service providers to compete more effectively in the provision of multichannel video services.

(9) Due to capacity limitations and in the interest of providing service in as many markets as possible, providers of Direct-to-home Satellite Service, unlike cable television systems, cannot at this time carry all local television broadcast signals in all the local television markets they seek to serve.

(10) It would be in the public interest for providers of Direct-to-home Satellite Service to fully comply with the mandatory signal carriage rules at the earliest possible date. In the interim, requiring full compliance with the mandatory signal carriage rules would substantially limit the ability of Direct-to-home Satellite Service providers to compete in the provision of multichannel video services and would not serve the public interest.

(11) Maintaining the viability of free, over-the-air local television service is a matter of preeminent public interest.

(12) All subscribers to multichannel video services should be able to receive the signal of at least one station affiliated with each of the major broadcast television networks.

(13) Millions of subscribers to Direct-to-home Satellite Service currently receive the signals of network-affiliated stations not located in these subscribers' local television markets. In those cases where cable service is not available and where conventional rooftop antennas cannot provide satisfactory reception of local stations, distant network signals may be these subscribers' only source of network television service.

(14) The widespread carriage of distant network stations in local network affiliates' markets could harm the local station's ability to serve its local community.

(15) Abrupt termination of satellite carriers' provision of distant network signals could have a negative impact on the ability of Direct-to-home Satellite Service to compete effectively in the provision of multichannel video services.

(16) The public interest would be served by permitting Direct-to-home Satellite Service providers to continue existing carriage of a distant network affiliate station's signal where_

(A) there is no local network affiliate;

(B) the local network affiliate cannot be adequately received off-air; or

(C) continued carriage would not harm the local network station.

SEC. 3. PURPOSE.

The purpose of this Act is to promote competition in the provision of multichannel video services while protecting the availability of free, over-the-air television, particularly for the 22 percent of American television households that do not subscribe to any multichannel video programming service.

SEC. 4. MUST-CARRY FOR SATELLITE CARRIERS RETRANSMITTING TELEVISION BROADCAST SIGNALS.

Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end thereof the following:

``SEC. 337. CARRIAGE OF LOCAL TELEVISION SIGNALS BY SATELLITE CARRIERS.

``(a) Application of Mandatory Carriage to Satellite Carriers._ The mandatory carriage provisions of sections 614 and 615 of this Act will apply in a local market no later than January 1, 2002, to satellite carriers retransmitting any television broadcast station in that local market and pursuant to the compulsory license provided by section 122 of

title 17, United States Code.

“(b) Good Signal Required._

“(1) Costs._ A local television broadcast station eligible for carriage under subsection (a) may be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier. The selection of a local receive facility by a satellite carrier shall not be made in a manner that frustrates the purposes of this Act. The Commission shall implement the requirements of this section without imposing any undue economic burden on any party.

“(2) Rulemaking required._ The Commission shall adopt rules implementing paragraph (1) within 180 days after the date of enactment of the Satellite Television Act of 1999.

“(c) Cable Television System Digital Signal Carriage Not Covered._ Nothing in this section applies to the carriage of the digital signals of television broadcast stations by cable television systems.

“(d) Definitions._ In this section:

“(1) Television broadcast station._ The term ‘television broadcast station’ means a full power local television broadcast station, but does not include a low-power or translator television broadcast station.

“(2) Broadcasting network._ The term ‘broadcasting network’ means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.

“(3) Network station._ The term ‘network station’ means a television broadcast station that is owned or operated by, or affiliated with, a broadcasting network.

“(4) Local market._ The term ‘local market’ means the designated market area in which a station is located. For a noncommercial educational television broadcast station, the local market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.

“(5) Satellite carrier._ The term ‘satellite carrier’ has the meaning given it by section 119(d) of title 17, United States Code.

“SEC.338. CARRIAGE OF DISTANT SIGNALS BY SATELLITE CARRIERS.

“(a) Provisions Relating to New Subscribers._

“(1) In general._ Direct-to-home Satellite Service providers shall be permitted to

provide the signals of only one affiliate of each television network to any household that initially subscribed to Direct-to-home Satellite Service on or after July 10, 1998.

“(2) Eligibility determination._ The determination of a new subscriber's eligibility to receive the signals of one or more distant network stations as a component of the service provided pursuant to paragraph (a) shall be made by ascertaining whether the subscriber resides within the predicted Grade B service area of the local network station. The Individual Location Longley-Rice methodology described by the Commission in Docket 98-201 shall be used to make this determination. A Direct-to-home Satellite Service provider may provide the signal of a distant network station to any subscriber determined by this method to be unserved by a local station affiliated with that network.

“(3) Rulemaking Required._

“(A) Within 90 days after the date of enactment of the Satellite Television Act of 1999, the Commission shall adopt procedures that shall be used by any Direct-to-home Satellite Service subscriber requesting a waiver to receive one or more distant network signals. The waiver procedures adopted by the Commission shall_

“(i) impose no unnecessary burden on the subscriber seeking the waiver;

“(ii) allocate responsibilities fairly between Direct-to-home Satellite Service providers and local stations;

“(iii) prescribe mandatory time limits within which Direct-to-home Satellite Service providers and local stations shall carry out the obligations imposed upon them; and

“(iv) prescribe that all costs of conducting any required measurement or testing shall be borne by the Direct-to-home Satellite Service provider, if the local station's signal meets the prescribed minimum standards, or by the local station, if its signal fails to meet the prescribed minimum standards.

“(4) Penalty for violation._ Any Direct-to-home Satellite Service provider that knowingly and willfully provides the signals of one or more distant network stations to subscribers in violation of this section shall be liable for forfeiture in the amount of \$50,000 per day per violation.

“(b) Provisions Relating to Existing Subscribers._

“(1) In general._ Providers of Direct-to-home Satellite Service may continue providing the signals of distant network stations to any subscriber located between the outside limits of the predicted Grade A and predicted Grade B contours of the corresponding local network-affiliated stations, and who received those distant network signals before July 10, 1998.

“(2) Time period._ Any Direct-to-home Satellite Service subscriber residing within the

predicted Grade A contour of a local network station and who received the signals of one or more corresponding distant network stations before July 10, 1998, may continue to receive those distant signals for a period of 210 days after the date of enactment of the Satellite Television Act of 1999 in order to allow for the performance of the signal strength testing and waiver provided under subsection (a)(3). The Commission shall have the authority to further extend this period if necessary.

“(3) Rulemaking Required._

“(A) Within 180 days after the date of enactment of the Satellite Television Act of 1999, the Commission shall conclude a single rulemaking, compliant with subchapter II of chapter 5 of title 5, United States Code, to examine the extent to which any existing program exclusivity rules should be imposed on distant network stations provided to subscribers under paragraph (1).

“(B) The Commission shall not impose any program exclusivity rules on Direct-to-home Satellite Service providers pursuant to subparagraph (A) unless it finds that it would be both technically and economically feasible and otherwise in the public interest to do so.

“(c) Waivers Not Precluded._ Notwithstanding any other provision in this section, nothing shall preclude any local network affiliate from authorizing the continued provision of distant network signals in unaltered form to any Direct-to-home Satellite Service subscriber currently receiving them.

“(d) Certain Signals._ Providers of Direct-to-home Satellite Service may continue to carry the signals of distant network stations without regard to subsections (a) and (b) in any situation in which_

“(1) a subscriber is unserved by a local station affiliated with that network; or

“(2) a waiver is otherwise granted by the local station under subsection (a)(3),

if such carriage would be consistent with rules adopted by the Commission in CS Docket 98-201.

“(e) Report Required._ Within 180 days after the date of enactment of the Satellite Television Act of 1999, the Commission shall report to Congress on methods of facilitating the delivery of local signals in local markets, especially smaller markets.”.

SEC. 5. RETRANSMISSION CONSENT.

(a) Amendment of Section 325(b)._Section 325(b) of the Communications Act of 1934 (47 U.S.C. 325(b)) is amended striking the subsection designation and paragraphs (1) and (2) and inserting the following:

“(b)(1) No cable system or other multichannel video programming distributor shall retransmit the signal of a broadcasting station, or any part thereof, except_

“(A) with the express authority of the station; or

“(B) pursuant to section 614 or section 615, in the case of a station electing, in accordance with this subsection, to assert the right to carriage under such section.

“(2) The provisions of this subsection shall not apply to_

“(A) retransmission of the signal of a television broadcast station outside the station's local market by a satellite carrier directly to subscribers if_

“(i) such station was a superstation on May 1, 1991;

“(ii) as of July 1, 1998, such station was transmitted under the compulsory license of section 119 of title 17, United States Code, by satellite carriers directly to at least 250,000 subscribers; and

“(iii) the satellite carrier complies with any program exclusivity rules that may be adopted by the Federal Communications Commission pursuant to section 338.

“(B) retransmission of the distant signal of a broadcasting station that is owned or operated by, or affiliated with, a broadcasting network directly to a home satellite antenna, if the subscriber resides in an unserved household; or

“(C) retransmission by a cable operator or other multichannel video programming distributor (other than by a satellite carrier direct to its subscribers) of the signal of a television broadcast station outside the station's local market, if such signal was obtained from a satellite carrier and_

“(i) the originating station was a superstation on May 1, 1991; and

“(ii) the originating station was a network station on December 31, 1997, and its signal was retransmitted by a satellite carrier directly to subscribers.

“(3) Any term used in this subsection that is defined in section 337(d) of this Act has the meaning given to it by that section.”.

(b) Effective Date._ The amendments made by subsection (a) take effect on January 1, 1999.

SEC. 6. DESIGNATED MARKET AREAS.

Nothing in this Act, or in the amendments made by this Act, prevents the Federal Communications Commission from revising the listing of designated market areas or reassigning such areas if the revision or reassignment is done in the same manner and

to the same extent as the Commission's cable television mandatory carriage rules provide.

SEC. 7. SEVERABILITY.

If any provision of this Act or section 325(b) or 337 of the Communications Act of 1934 (47 U.S.C. 325(b) or 337, respectively), or the application of that provision to any person or circumstance, is held by a court of competent jurisdiction to violate any provision of the Constitution of the United States, then the other provisions of that section, and the application of that provision to other persons and circumstances, shall not be affected.

SEC. 8. SECONDARY TRANSMISSIONS.

(a) Amendment of Section 119(a)(2)(B) of title 17, United States Code._ Section 119(a)(2)(B) of title 17, United States Code, is amended to read as follows:

“(B) Secondary transmissions to unserved households._ Except as provided in subparagraph (5)(E) of this subsection, the license provided for in subparagraph (a) shall be limited to secondary transmissions to persons who reside in unserved households.”.

(b) Amendment of Section 119(a)(5) of such title._ Section 119(a)(5) of title 17, United States Code, is amended by adding at the end thereof the following:

“(E) Exception._ The secondary transmission by a satellite carrier of a primary transmission made by a network station to subscribers who do not reside in unserved households shall not be an act of infringement if_

“(i) such station was a superstation on May 1, 1991; and

“(ii) such station was lawfully retransmitted by satellite carriers directly to at least 250,000 subscribers as of July 1, 1998.”.

SEC. 9. DEFINITIONS.

In this Act:

(1) Terms defined in Communications Act of 1934._ Any term used in this Act that is defined in section 337(d) of the Communications Act of 1934, as added by section 4 of this Act, has the meaning given to it by that section.

(2) Designated market area._ The term “designated market area” means a designated market area, as determined by Nielsen Media Research and published in the DMA Market and Demographic Report.

